



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

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Public Hearing Date: September 27, 2004
Zoning and Planning Action Date: November 22, 2004
Board of Aldermen Action Date: December 6, 2004
90-Day Expiration Date: December 26, 2004

TO: Board of Aldermen
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Juris G. Alksnitis, Chief Zoning Code Official

SUBJECT: PETITION #432-01 of ALD. SANGIOLO proposing to add a definition for
"recreational facilities" to Sec. 30-1 of the Zoning Ordinance.

CC: Mayor David B. Cohen
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee

RECOMMENDATION: Adopt in revised form. See VI. Summary and Recommendations.

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider its discussion at a subsequent Working Session.

I. BACKGROUND

This petition was first heard June 14, 2004, at which time the item was held pending further research by the Planning and Development Department. At this time, the petition is being reheard, as the initial time (90-day) period for action has expired.

Following considerable debate and discussion, on March 18, 2002, the Board of Aldermen adopted Ordinance X-10, which added a new definition for "health club" to Section 30-1, *Definitions*. (*See Attachment A - Excerpts of Newton Zoning Ordinance Definitions*)

Since that time, a number of fitness type businesses have located within the City. Most have not readily fit the new definition, and have been handled consistent with the zoning use category most nearly similar to the service character of such businesses, i.e. as fitness service establishments.

In addition, concerns have been voiced that the existing *health club* definition does not cover a variety of other recreational type uses and/or facilities. The current petition to establish definitions for indoor and outdoor recreational facilities needs to be considered in light of the existing “health club” definition, other applicable sections of the Newton Zoning Ordinance, and implementation experience to date. In addition, it will be important to better understand the scope of these new definitions, their relation to “health clubs,” and potential application to municipal, institutional, private non-profit, and commercial recreational uses.

II. EXISTING ORDINANCE AND PROPOSED AMENDMENT

While the Newton Zoning Ordinance has a definition of *health club* as adopted pursuant to Ordinance X-10, there is no definition of “recreational facility.” The proposed change under this petition seeks to add two new broad definitions in Section 30-1 *Definitions* as follows:

Indoor Recreational Facility – Any establishment whose main purpose is to provide for recreational use conducted entirely within a building, including arcade, athletic and health clubs, auditorium, bowling alley, club or lounge, community center, conference center, gymnasium, athletic center, pool, tennis court, skating rink or billiard hall.

Outdoor Recreational Facility -- A recreational land use conducted outside of a building, characterized by potentially substantial impacts on traffic, the natural environment, and the surrounding neighborhood, athletic fields; miniature golf; skateboard park; swimming, bathing; wading and other therapeutic facilities; tennis, handball, basketball courts; batting cages, trampoline facilities.

Such uses shall not be permitted without grant of a special permit if the property abuts, or is located in a residential zone.

The purpose of the proposed definitions is to add the special permit mechanism for regulating a broad range of recreational uses not otherwise “captured” by the zoning ordinance and which might potentially have an undue impact on residential areas.

III. SUMMARY OF RESEARCH

Our review of the zoning ordinances and by-laws of other Massachusetts municipalities including: Boston, Brookline, Cambridge, Needham, Norwood, Quincy, Scituate, Watertown, and Wellesley found a range of approaches. While relatively few ordinances defined “health club” or “recreational facility,” all utilized a range of terms in the sections or tables of their zoning ordinances reciting allowed uses and corresponding zoning districts. Commonly used terms included: club, recreational facility, and open-air use of land, amusement park, and the like. ***Attachment B - Recreational Terms and Uses Employed in Other Massachusetts Communities*** illustrates and summarizes various terms and uses found in zoning by-laws and ordinances of the sampled communities. In addition, most ordinances drew distinctions between municipal, non-profit, private, for-profit, indoor, and outdoor uses. This is also reflected in the sample of terms found in the publication A Planners Dictionary, published by the American Planning Association. (See ***Attachment C - Excerpts from A Planners Dictionary***). The summary table in Section V. Analysis below illustrates the range of recreational uses, main categories and distribution of recreation uses among the major groupings.

IV. EXPERIENCE TO DATE WITH HEALTH CLUBS AND FITNESS ESTABLISHMENTS

Although the definition of *health club* was adopted along with a companion parking requirement specifically for health clubs (See Section 30-19(d)(21)), it is noted that no action was taken at that time with respect to locating such clubs within any particular zones as uses allowed either by

right or by special permit. Since adoption of the *health club* definition in March 18, 2002, *no* cases have been submitted for review and approval by the Board of Aldermen pursuant to the special permit process. However, health clubs not meeting the parking requirement would need to seek a parking waiver special permit from the Board of Aldermen. In contrast, a number of lesser fitness enterprises have located or relocated within the City “as-of-right.”

At present, an ongoing evolution of fitness businesses continues to alter the range of programs, services, and configuration of facilities, which these enterprises provide. It is becoming increasingly evident that many fitness establishments have some components (such as individual physical activities, exercise machines) included in the *health club* definition, but on balance would not meet this definition due to various limitations in scale, types of machines, supporting facilities, etc., nor would trigger the health club parking requirement. The City has typically viewed such lesser fitness businesses as “fitness service establishments” which may be located as-of-right in Business zones 1-3, Mixed Use 2, and Limited Manufacturing zones, and by special permit in the Mixed Use 1 zone, all subject to meeting parking requirements pursuant to Section 30-19(d)(10). If there have been concerns or complaints about the operations of such “fitness service establishments,” these issues have not been brought to the attention of the Planning Department.

Recent examples of “fitness service establishments” operating as-of-right:

- Boston Body (46 Austin St., NV; BU-5)
Variety of group fitness programs utilizing machines, pilates, coaches, etc.
- Curves (109 Oak St., UF; BU-1)
“Low impact” group fitness exercise program for women.
- Gymboree Play & Music (109 Oak St.; BU-1)
Multiple group sessions for children 0-4 using children’s’ gym equipment (no machines) and involving parents.
- Fitness Together (2088 Commonwealth Ave., Aub; BU-1; 796 Beacon St., NCtr; BU-1)
”Studio” individualized fitness program for adults utilizing 1-1 trainer-client arrangement with machines; limited number of studio rooms and clients at one time.

Newly approved (special permit) fitness service establishment:

- Peak Fitness, (70 Jaconnet St., UF; MU-1)
Approved by Special Permit #237-04 as a “fitness service establishment” offering individualized fitness training for adults utilizing 1-1 trainer-client arrangement with machines and also concurrently providing gymnastics classes for children.

Commercial health club and fitness service type establishments previously established in the City:

- Bodyscapes (1197 Walnut St., Newton Highlands; BU-1)
- Boston Sports Clubs (1359 Washington St., West Newton; BU-1)
- Esposito’s Karate Fitness Training Ctr. (230 Adams St., Nonantum; BU-2)
- Forever Fit, (191 Watertown St., Nonantum; MF)
- Future Shapes, Inc. (56 Winchester St., Newton Highlands; MU-2)
- Wellbridge Health and Fitness Center (135 Wells Ave., Newton; LM)

Non-profit organization with health and fitness programs and facilities previously established in the City:

- West Suburban YMCA (276 Church St., Newton Corner; MR-1)
(Note: recent expansion authorized pursuant to special permit)

V. ANALYSIS.

The proposed new omnibus definitions of indoor and outdoor recreation facilities seek to aggregate many uses within “outdoor” and “indoor” categories and to regulate them through the special permit process when located within or abutting residential zones. This approach includes multiple types of recreational uses, which are unlike each other as to character, scale, traffic, and overall impact. Three main groups of uses/facilities emerge - municipal, private/nonprofit, and commercial facilities. The following summary table consolidates information from the research of Massachusetts and APA sources.

Category	Municipal	Private/nonprofit; non-gov. agency; educational inst.	Commercial
Club	N/A	<ul style="list-style-type: none"> ▪ Civic, social, country clubs ▪ Golf , yacht clubs ▪ Health, fitness, tennis, swimming activities. ▪ Riding 	<ul style="list-style-type: none"> ▪ Health, fitness clubs ▪ Therapeutic activ. ▪ Tennis, handball ▪ Swimming ▪ Other sports
Indoor recreational facility	<ul style="list-style-type: none"> ▪ Community center ▪ Recreational building 	<ul style="list-style-type: none"> ▪ Fitness eq. & prog. ▪ Basketball ▪ Tennis, handball ▪ Swimming ▪ School sports 	<ul style="list-style-type: none"> ▪ Amusement center ▪ Arcade ▪ Batting cages ▪ Bowling alleys ▪ Billiard & pool ▪ Electronic games ▪ Movie; theater ▪ Skating rinks
Open air recreational facility	<ul style="list-style-type: none"> ▪ Beaches ▪ Bicycle paths ▪ Boating ▪ Fishing, hunting ▪ Parks, playgrounds ▪ Reservations ▪ Reservoir ▪ Skateboard park ▪ Sports fields ▪ Walking paths ▪ Waterways 	<ul style="list-style-type: none"> ▪ Beaches ▪ Boating ▪ Fishing, hunting ▪ Parks, playgrounds ▪ Reservations ▪ Sports fields ▪ School sports ▪ Walking paths ▪ Waterways 	<ul style="list-style-type: none"> ▪ Amusement park ▪ Batting cages ▪ Boating, boat livery, marina ▪ Commercial golf course, miniature golf, golf driving range ▪ Drive-in theater ▪ Firing range ▪ Fishing, hunting ▪ Motorized cart and motorcycle tracks ▪ Paint ball, laser tag, orienteering ▪ Recreation camp ▪ Riding academy or stable ▪ Skateboard park ▪ Skating rink ▪ Ski ground ▪ Stadium ▪ Tennis, handball ▪ Trampolines ▪ Water slide & park

In Newton, municipal recreational uses and areas are typically zoned Public Use and covered by Section 30-6 *Allowed Uses for Public Use Districts*, which includes commons, public gardens, parks and conservation areas, playgrounds, waterworks reservations, and publicly-owned cemeteries. While not further defined either in Section 30-1 *Definitions*, or within Section 30-6, these uses (along with a number of non-recreational uses) are subject to site plan approval per Section 30-23, or site plan approval per Section 5-58 for municipal buildings or facilities. Previously “unzoned” land in municipal ownership was rezoned Public Use in 1987 and now typically encompasses municipal recreational and conservation assets.

In addition, Section 30-7, *Open Space/Recreation Districts* was also adopted in 1987. This zone allows as-of-right active and passive outdoor recreational activities such as golf courses, boating, play areas, nature studies and walks, and privately owned cemeteries, but excludes motorized recreational vehicles and sports stadiums. Certain accessory uses and facilities exceeding 700 sq. ft. such outdoor swimming pools, tennis courts, boathouses, bathhouses, and recreational shelters require site plan approval pursuant to Section 30-23. Additional approvals through the special permit process are required for clubhouses in conjunction with golf courses and indoor swimming pools, tennis courts, and recreational facilities. While the City’s intent was to apply this provision to privately held open space, particularly golf courses and cemeteries, golf courses declined to be rezoned. As a result, only two cemeteries (St. Mary’s Cemetery; Newton Cemetery) are currently located in this zone.

Non-profit civic and social clubs with extensive health facilities could potentially trigger the “like establishment” clause of Ordinance X-9 establishing the health club parking requirement. However, such clubs are otherwise not covered by the health club definition due to their non-profit status. Had country clubs and golf clubs been rezoned to the Open Space/Recreation district, the applicable regulations of this zone would have applied. It is also noted that school sports facilities of various types are typically accessory to educational institutions (*Dover amendment entities*) and may be located in any zoning district. Such facilities are subject to the administrative site plan review procedure per Section 30-5(a)(2). In addition, other types of accessory amusement uses, such as arcades, billiard rooms, and the like are also subject to the administrative site plan review process when serving an educational institution.

Independent uses which are more like commercial indoor amusement activities (arcades, pool halls, movies, theaters, etc.) as well as larger scale indoor for profit amusement-recreation facilities such as (ice and roller skating rinks and bowling alleys), are already addressed in various ways, and are allowed in several zoning districts. For example, Section 30-11(g) allows a “place of amusement or place of assembly, whether indoor or outdoor” by special permit in the Business 2 zone and Section 30-12(d) allows a “place of amusement or assembly, other than a bowling alley” by special permit in the Limited Manufacturing district, along with “commercial outdoor amusement or recreation place or places of assembly including an outdoor motion picture theater.” A bowling alley is allowed as-of-right in the Business 2 zone, while a theatre, hall or club is allowed as-of-right in the Mixed Use 2 district. In addition, site plan approval is required for buildings having 10,000-19,000 sq. ft. of gross floor area and a special permit is required for buildings having 20,000 sq. ft. or more gross floor area.

Although more prevalent than in the past, commercial health clubs and fitness service establishments represent a relatively modest subset of recreational facilities in general. It may be appropriate to further define these activities, and also to review and ensure that they are placed in appropriate zoning districts. As noted above, while health clubs are not now placed in any zone, fitness service businesses are seen as “service” establishments which may be located as-of-right in

Business zones 1-3, Mixed Use 2, and Limited Manufacturing, and by special permit in the Mixed Use 1 zone.

Finally, the Law Department has advised that special permit requirements may not be established through the means of definitions. As a result, the special permit language will need to be removed. However, it may be appropriate to explore development of special permit language for use in Section 30-5(b), which applies to all districts.

VI. SUMMARY AND RECOMMENDATION

The intent of the proposed new omnibus definitions for “Indoor Recreational Facilities” and “Outdoor Recreational Facilities” is to better regulate recreational type uses by making recreational uses within or adjacent to residential areas subject to the special permit process. However, as proposed, these definitions would group together various unlike recreational uses despite significant differences in character between municipal, private/non-profit, and commercial recreational uses, facilities, and establishments. Another approach in the case of recreational uses or facilities which generate particular concern, would be to address such uses directly by developing use-specific definitions, as was done with health clubs, and also locating such uses within appropriate zones (*which apparently was overlooked in the case of health clubs*). It would also make sense to focus on a particular subgroup of recreational uses, such as for-profit commercial recreational operations, which have a higher potential impact.

As proposed, the provision for making the new definitions subject to special permit when in or adjacent to a residential district will cause a layering of special permit requirements on top of existing provisions already in the Zoning Ordinance governing many of these uses. For example, while most municipal recreational facilities are located in areas abutted by residence zones in order to serve nearby neighborhoods, such facilities are currently subject to site plan approval. Educational sports facilities are subject to administrative site plan review, but not special permit. Fitness service establishments are available as-of-right in several zones providing for commercial uses, but also by special permit in a related zone. Many commercial amusement enterprises are limited to Business and Limited Manufacturing zones, and require a special permit. In discussing this with the petitioner, it was agreed to propose amended language so as to avoid “double regulation” of uses already addressed by the Zoning Ordinance.

The Planning Department recommends that the Board of Aldermen:

- *Add “health club” as a use subject to special permit in the Business 2- 5, Mixed Use 1 & 2, Limited Manufacturing, and Manufacturing zones, regardless of building size.*
- *Develop and adopt a definition for “fitness service establishment” to distinguish lesser fitness businesses from health clubs.*
- *Add “fitness service establishment” to the Business 1-5, Mixed Use 1 & 2, and Limited Manufacturing zones as-of-right, and subject to the requirements for site plan approval or special permit when the respective building size thresh-holds are triggered as currently provided in the Zoning Ordinance.*
- *Modify the proposed definitions of indoor and outdoor recreational facility to focus on commercial recreational uses other than health clubs and fitness service establishments (defined elsewhere), add language to reflect potential omitted uses, and add language to avoid double regulation.*

Suggested language is as follows (bold text indicates suggested changes).

- ◆ ***Commercial Indoor Recreational Facility*** – ***Any for profit*** establishment ***other than a health club or fitness service establishment*** whose main purpose is to provide for recreational use conducted entirely within a building, including arcade, athletic center, auditorium, ***basketball court, batting cages, billiard hall, bowling alley, climbing tower, conference center, firing range, gymnasium, pool, handball, tennis, or racquet ball court, ice or roller skating rink, trampoline facilities, volley ball court, and similar uses.***
- ◆ ***Commercial Outdoor Recreational Facility*** – ***Any for profit*** recreational land use ***or establishment*** conducted outside of a building including amusement ***park***, athletic fields, ***batting cages, boating, boat livery, climbing tower, commercial golf, firing range, fishing, golf driving range, hunting, laser tag, marina, ice or roller skating rink, miniature golf, motorized bicycle, cart, or motorcycle track, paint ball, recreation camp, riding academy, skateboard park, ski ground, stadium, swimming beach or pool, tennis, handball, or racquetball court, trampoline facilities, volley ball court, wading and other therapeutic facilities, water slide or park, and similar facilities or uses.***

Additionally, the Planning Department recommends that the Law Department craft language, for possible placement in Section 30-5(b), in order to apply special permit requirements. Possible language for consideration and further refinement might be: “*Unless otherwise regulated by existing provisions of the Zoning Ordinance, Commercial Indoor Recreational Facilities and Commercial Outdoor Recreational Facilities as defined in Section 30-1 shall not be permitted without grant of special permit if the property abuts or is located in a residential zone.*”

ATTACHMENTS:

- ***Attachment A - Excerpts of Newton Zoning Ordinance Definitions***
- ***Attachment B – Recreational Terms and Uses Employed in Other Mass. Communities***
- ***Attachment C - Excerpts from A Planners Dictionary***

Attachment A - Excerpts of Newton Zoning Ordinance Definitions
Section 30-1, Definitions

Club: Any organization of persons having a common purpose, provided that said purpose is not a profit venture.

Health club: A commercial establishment which as its primary purpose provides facilities for individual physical health activities, such as aerobic exercise, running and jogging, use of exercise equipment, saunas, showers, massage rooms and lockers. Such establishments are operated as a business even if open only to members and their guests on a membership basis and not to the public at large paying a daily admission fee.

Place of Assembly: An establishment used principally for the meeting together of a number of persons at the same time for the purpose of deliberation, worship, education or entertainment such as, but not limited to, churches, synagogues, theaters, halls, auditoriums and clubs.

Sports stadium: A building or structure containing tiered seating facilities for more than two hundred (200) spectators at sporting events.

Attachment B – Recreational Terms and Uses Employed in Other Massachusetts Communities

Summarized from zoning by-laws and ordinances

Boston

- **Publicly owned open space for active or passive recreational use or conservation of natural resources** (waterways, beaches, reservations, parks, playgrounds, etc.) are allowed as of right in residence, business and industrial zones, except maritime reserve.
- **Privately owned open space for active or passive recreational use or conservation of natural resources** are allowed as of right in residence, business and industrial zones, except maritime reserve.
- **Open space recreational building** is allowed by special permit in residence, business and industrial zones, except maritime reserve.
- **Private grounds for games and sports not conducted for profit** are allowed as of right in residence and business zones and by special permit in industrial zones.
- **Open air or drive-in places of assembly operated for profit** (theater, stadium, golf driving range, etc.) are allowed in selected business zones by special permit and in selected industrial zones either as of right or by special permit.

Brookline

- **Recreational facility owned or operated by an agency of the Town** or other government is allowed as of right in residence, business and industrial zones.
- **Recreational facility owned or operated by a non-government agency not as a for profit business** is allowed by Special Permit in residence zones and as of right in business and industrial zones.
- **Private health and fitness club for profit and for members only** is only allowed in business and industrial zones and only by Special Permit.
- **Private health and fitness club not for profit and for members only** is allowed as of right only in business and industrial zones.
- **Tennis court or swimming pool** is allowed as of right in all zones. (However pools or tennis courts in a required side or rear yard requires a special permit unless screening requirements are satisfied.)

Cambridge

- **Social or recreation center** is allowed as of right in open space, business, industrial and some residence zones.

- **Municipal park, playground or public recreation building** is allowed as of right in open space, business, industrial and some residence zones.
- **For profit outdoor amusement park or sports facility** is allowed only by special permit in selected industrial zones.

Needham

- **public park and playground and municipal structure including water tower and reservoir** is allowed as of right in residence, business, institutional, and industrial zones.
- **Private club not conducted, as a business** requires a special permit in residence, business, institutional, and industrial zones.
- **Theaters and indoor moving picture shows, pool and billiard rooms** are allowed as of right in general business and industrial zones, but requires a special permit for special business zones.
- **Electronic game and music arcades** are allowed as of right in general business and industrial zones only.
- **Bowling alleys, skating rinks, billiard rooms, and similar commercial amusement or entertainment places** are allowed as of right in general business and industrial zones only.
- **Public parks, playgrounds, municipal buildings or uses** are allowed as of right in the neighborhood business district.
- **Outdoor recreation activities and facilities, including unpaved play areas, nature study, boating, fishing and hunting** are allowed as of right in the flood plain district.

Norwood

- **Non-profit social, civic or recreational activity by a club for members** is allowed as of right in business zones, by special permit in residence zones, and not allowed in office and industrial zones.
- **Commercial recreational uses** (boat livery, outdoor skating rink, recreation camp, ski ground, riding academy or stable) is allowed by special permit in some residence and business zones, and not allowed in office and industrial zones.
- **Commercial golf course with min. 30 acres** is allowed by special permit in one residence zone, and as of right in one business and one office and industrial zone.
- **Golf driving range, miniature golf, or similar outdoor commercial amusement use** is allowed by special permit in one business and one industrial zone.
- **Amusement park, drive-in theater, stadium or other outdoor spectator sport facility** is allowed by special permit in one industrial zone.

Quincy

- **Private non-profit club operated for members only** is allowed as of right in business and some industrial zones.
- **Entertainment and recreation facilities for profit** (bowling, swimming pool, theater, nightclub, skating rink, marina, pool hall, etc.) are allowed as of right in industrial and some business zones.

Scituate

- **Public recreation or water supply use** allowed as of right in residence, business zones, and saltmarsh and tideland conservation zones and by special permit in flood plain and watershed protection zones.
- **Commercial golf course** (excluding driving range and miniature golf) allowed by special permit in residence zones and as of right in multi-family and business zones.
- **Non-profit club for social, civic or recreational use** (country club, yacht club, lodge etc.) is allowed by special permit in residence zones and as of right in multi-family and business zones.

Watertown

- **Clubs** (country club, tennis club, swimming club, nonprofit club) are allowed by special permit in residence, industrial, and open space zones.
- **Recreational facility owned or operated by an agency of the Town or other government** is allowed as of right in all zones.
- **Public open space** is allowed as of right in all zones.
- **Commercial recreation** (bowling alley, enclosed skating rink, etc.) is allowed as of right in industrial and some business zones.
- **Outdoor amusement park or sports facility conducted for profit** are *not* allowed.
- **Open-air drive-in theater or place of entertainment** are not allowed.

Wellesley

- **Non-commercial open-air recreation uses** (golf courses, public parks, boating, fishing) are permitted in the flood plain or watershed districts.
- **Outdoor recreation uses** (play and sporting areas, nature study, boating, fishing, foot bridges, plank walks, foot paths, and bicycle paths) are permitted in conservation districts

Attachment C - Exerpts from *A Planners Dictionary*

In prep – will be added.